For Release 2003/06/05. CIA-RDP84-00780

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land Carren

DD/S REGISTRY
Medical

14 May 1971

MEMORANDUM FOR: Deputy Director for Support

SUBJECT:

Functions of Agency Staff Physicians

1. You have asked our opinion on two problems affecting the functions of staff physicians of the Agency. First, does a privilege exist in communications between such physicians and those they deal with on behalf of the Agency? Secondly, can the Agency protect its physicians against malpractice suits by other employees or personnel the physicians deal with in connection with their duty to the Agency?

### 2. Privilege

- a. At common law, communications made to a physician by a patient are not privileged. A number of states have passed laws prohibiting testimony by physicians concerning their patients unless the patient waives his privilege or the court believes the testimony is necessary to the disposition of the case.
- b. We are not presently faced with this technical question of privilege in court but are concerned with the question of silence outside the courtroom. Every physician is deeply indoctrinated with the general ethical obligation to keep silent on what he learns from patients from verbal communications or observes from examinations and treatments. In this connection, the Principles of Medical Ethics provides:

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A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

c. In my opinion, information pertaining to important security implications concerning the Agency or pertaining to the national welfare come within the exception provided in the above quotation. Furthermore, the ethical privilege has been held not to exist when the purpose of the contact between the physician and the individual is for examination for which no advice or treatment is contemplated, particularly where the physician is engaged by another for the very purpose of reporting results of such examination and the individual is aware of this. In any case, we believe there is no legal recourse against the physician supplying information to the Agency under the circumstances set forth above.

#### 3. Malpractice

- a. A more serious legal problem is presented by the question of malpractice suits against Agency physicians. Malpractice and assault cases against physicians have been on the increase. The amounts of recoveries have jumped to huge sums, and adequate insurance is ever more difficult to obtain. To physicians in private practice this is indeed a very serious problem. Staff employees of the Agency, however, are in a very different situation with regard to any medical service performed in connection with their responsibilities to the Agency.
- b. The courts have recently given very wide scope to such responsibilities. Thus, in the leading case in the Supreme Court, Barr v. Mateo, 360 U.S. 564 (1959), the court gave absolute privilege to a Government employee if his actions were "within the outer periphery" of his duties. To illustrate the Agency's attitude toward such

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situations, we have had two	o court c	ases in the last few	
years.			STA
		vided defense counsel,	
who introduced the "scope	of emplo	byment" defense based	
on Barr v. Mateo cited abo	ve and r	nade a motion for sum-	
mary judgment. The moti	on was g	ranted, an appeal was	
taken, the lower court was	eventua	ily upnerd, and the	
Supreme Court denied cert	norarı.	All expenses were	
paid by the Agency.			
T a sthan again CI	A and the	Donartment of Defense	
c. In another case, GL had classified contracts wi		e Department of Defense	
nad classified contracts wi		7	
Later,	Federal	courts upheld this ruling	
even though the individual			Į.
employee. It is inconceiv	able, the	erefore, that a staff	
physician of the Agency w			
by him in the interest of the	ne Agenc	y would not be fully	
backed and held harmless	by the A	gency. As stated in	

To allow the fear or risk of personal liability for their official acts to inhibit . . . /Federal7 . . . doctors from performing their duty . . . would be contrary to the national interest. Gamage v. Peal, 217 F. Supp. 384 (N.D. Cal. 1962).

one case:

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not be inhibited by fear of leg	e, that our staff physicians should al consequences from taking action nequested when the action appears as or administrative requirements	S
of the Agency.		

LAWRENCE R. HOUSTON General Counsel

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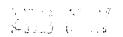
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#### MEMORANDUM FOR THE RECORD

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SUBJECT: Conversation with Mr. Andrew D. Ruddock,
Director, Bureau of Retirement and Insurance

- 2. Mr. Ruddock reported that BRI used to have a problem of physicians refusing to respond to calls for assistance from employees. He gave me one example of an employee who was sent to the Health Unit by his supervisor who felt that the employee was intoxicated. In turn, the nurse at the unit went to obtain the services of a physician. The physician refused to see the employee because he did not want to get involved in the question of an employee drunk on duty.
- 3. Mr. Ruddock indicated that he resolved this type of problem by making it perfectly clear to the physician what was expected of him. Some of Mr. Ruddock's physicians work on adjudications, some on other administrative tasks; others work in the Health Unit. When he makes it clear that it is a part of a physician's duty or responsibility to respond to calls for help or attention from employees, the physician is expected to render the necessary care. When Mr. Ruddock has his initial discussion with a physician concerning his duties, the physician has the opportunity at that time to raise questions of ethics or other reasons why he cannot perform. In the end, the physician has the choice of refusing the employment or resigning, if already on board. In effect, Mr. Ruddock reaches a clear understanding with the physician of the conditions of his employment before any incident arises. Doctors whose duties do not include providing the type of emergency service employees might need would have a right to refuse to render such care; on the other hand, doctors whose duties include this responsibility are expected to provide emergency care.



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4. In our kinds of cases, Mr. Ruddock suggested that our attorneys review the extent to which liability, for the physician and the United States Government, is created when the physician responds to after-duty requests of the type we were discussing. There was little question in his mind, aside from the matter of possible legal liability, that the solution to our problem is for the Agency to reach a full and clear understanding with each physician of what is expected of him - in advance of any incident.

Deputy Director of Personnel for Special Programs

STA<sup>1</sup>